

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

ROBERT JOSEPH NEIGHBORS,

Appellant.

DOCKET NUMBER WD78926

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: October 25, 2016

APPEAL FROM

The Circuit Court of Pettis County, Missouri
The Honorable Dennis A. Rolf, Judge

JUDGES

Division IV: Pfeiffer, C.J., and Howard and Witt, JJ.

CONCURRING.

ATTORNEYS

Chris Koster, Attorney General
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Attorneys for Respondent,

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Attorney for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
Respondent,)
v.) **OPINION FILED:**
) **October 25, 2016**
ROBERT JOSEPH NEIGHBORS,)
)
Appellant.)

WD78926

Pettis County

Before Division IV Judges: Mark D. Pfeiffer, Chief Judge, and Victor C. Howard and Gary D. Witt, Judges

Robert Neighbors (“Neighbors”) appeals the judgment of the Circuit Court of Pettis County, Missouri (“trial court”), which found him guilty of two counts of felony first-degree child molestation following a jury trial. Neighbors makes three arguments on appeal:

(1) Neighbors contends that the trial court erred in denying his off-the-record request during voir dire to excuse the venire panel while Neighbors was escorted by two uniformed guards into the jury’s chambers for discussions about disputed issues relating to voir dire.

(2) Neighbors contends that the trial court erred in failing to grant his request for a mistrial based on the prejudicial effect of allowing the venire panel to see him escorted from the courtroom by guards, because allowing the jury to see him being escorted from the courtroom by guards “made it clear to the panel that [he] was in custody and presumably dangerous, and therefore prejudiced the panel against him prior to the start of trial.”

(3) Neighbors contends that the trial court erred in overruling his objection to the admission of testimony by Victim’s father (“Father”) at trial. Specifically, he argues that Father’s testimony was inadmissible hearsay that did not fall within any hearsay exception, and the trial court failed to make the specific findings of reliability regarding Father’s testimony as is required to admit the testimony pursuant to the hearsay exception of section 491.075.

AFFIRMED.

Division IV holds:

(1) Neighbors's first argument was not preserved for appellate review. To preserve an argument for appellate review, parties must first make a specific, definite objection on the issue; second, they must ensure that the objection is preserved in the record; and finally, they must obtain a ruling on the objection from the trial court which is also preserved in the record. Here, Neighbors did not make an on-the-record objection to his guard escorts in view of the venire panel, nor did he obtain an on-the-record ruling on such an objection from the trial court. Accordingly, he did not preserve the issue for appellate review.

(2) The trial court did not err in denying Neighbors's request for a mistrial based on the prejudicial effect of allowing the venire panel to see him escorted from the room by guards. Missouri law prohibits the visual shackling or other physical restraint of defendants during the guilt or penalty phase of a criminal trial unless that use is justified by an essential state interest. However, mere escort of a defendant by uniformed guards does not constitute impermissible "restraint" where the defendant is not otherwise shackled or handcuffed during the escort. Here, there was no evidence that Neighbors was ever shackled or handcuffed in the presence of the jury. Accordingly, the trial court did not err in denying Neighbors's request for a mistrial on this basis.

(3) The trial court did not err or abuse its discretion in overruling Neighbors's objection to the admission of Father's testimony at trial. While it is preferred that the trial court make a specific written or oral finding of reliability regarding a witness's proposed testimony under section 491.075, the witness's reliability is implicit when the defendant's objection to the testimony at trial is overruled and the witness is allowed to testify. Here, the trial court both granted the State's section 491.075 motion (which included the State's request to include Father's challenged testimony) and overruled Neighbors's objection to the admission of Father's testimony at trial. Accordingly, the trial court did not abuse its discretion by admitting Father's challenged testimony pursuant to the hearsay exception of section 491.075.

Opinion by: Mark D. Pfeiffer, Chief Judge

October 25, 2016

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